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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Johnny Wheatcroft,

10 Plaintiff,

11 v.

12 City of Glendale, et al.,

13 Defendants.  
14

No. CV-18-02347-PHX-MTL

**ORDER**

15 Before the Court is Defendant Officer Michael Fernandez Motion for  
16 Reconsideration (Doc. 299) of this Court's Order denying summary judgment (Doc. 294).  
17 Per the Court's request, Plaintiffs Johnny Wheatcroft and minors J.W. and B.W have  
18 filed a response in opposition. (Doc. 307.) Upon reconsideration, the Court grants in  
19 part and denies in part the motion.

20 **I.**

21 The Court previously set forth this case's background in detail. (Doc. 294 at 1–5.)  
22 Defendants Officers Michael Fernandez, Matt Schneider and Mark Lindsey as well as the  
23 City of Glendale moved for summary judgment on all of Plaintiffs' counts against them.  
24 (Docs. 245 and 274.) The Court's summary judgment order addressed many issues,  
25 including denying Defendants' motion as to Plaintiffs' claims for excessive force and  
26 civil rights violations. (Doc. 294 at 40.) The Court also implicitly denied Officer  
27 Fernandez's qualified immunity claim. (*Id.* at 13–15; 24–26.)

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1 **II.**

2 A district court has discretion to reconsider and amend prior orders. Fed. R. Civ.  
 3 P. 54(b). Motions for reconsideration are generally disfavored and should be denied  
 4 “absent a showing of manifest error or a showing of new facts or legal authority that  
 5 could not have been brought to [the court’s] attention earlier with reasonable diligence.”  
 6 LRCiv. 7.2(g). Additionally, “[m]otions for reconsideration are disfavored . . . and are  
 7 not the place for parties to make new arguments not raised in their original briefs. Nor is  
 8 reconsideration to be used to ask the Court to rethink what it has already thought.”  
 9 *Motorola, Inc. v. J.B. Rodgers Mech. Contractors*, 215 F.R.D. 581, 582 (D. Ariz. 2003)  
 10 (cleaned up).

11 **III.**

12 Officer Fernandez asserts he made a reasonable mistake of fact regarding who  
 13 knocked Officer Lindsey unconscious—because Officer Fernandez believed that  
 14 Wheatcroft struck Officer Lindsey, he deployed his Taser one time, which was  
 15 objectively reasonable under those circumstances. (Doc. 299 at 3–4.)

16 First, Officer Fernandez contends the uncontested facts show he made a mistake of  
 17 fact regarding who struck Officer Lindsey. After Officer Fernandez arrived on the scene,  
 18 he approached the drivers’ side of the vehicle while Officers Lindsey and Schneider were  
 19 talking with Wheatcroft on the passengers’ side. (Docs. 246 at ¶¶ 47–48, Doc. 261 at ¶¶  
 20 47–48.) Then, Anya Chapman swung a grocery bag full of soda cans and struck Officer  
 21 Lindsey, knocking him unconscious for several minutes. (*See* Lindsey Body Cam at  
 22 3:19–4:08; Doc. 2446-1 at 146, 114.) After Officer Lindsey was struck, Officer  
 23 Fernandez came around to the passengers’ side of the vehicle to assist Officer Schneider.  
 24 (Docs. 246 at ¶ 64, Doc. 261 at ¶ 64.) Officer Fernandez testified at his deposition that  
 25 he “initially” assumed that Wheatcroft was the person that struck Officer Lindsey. (Doc.  
 26 246-1 at 172.) Then, he later testified at his deposition that he “blame[d] Ms. Chapman  
 27 for Officer Lindsey getting knocked out.” (Doc. 261-2 at 27.) Accordingly, Officer  
 28 Fernandez asserts he made a mistake of fact regarding who struck Officer Lindsey. (Doc.

1 299 at 3.) Plaintiffs dispute that Officer Fernandez thought Wheatcroft struck Officer  
2 Lindsey. (Doc. 261 at ¶ 66.) But Plaintiffs’ only support for this assertion is Officer  
3 Fernandez’s post-hoc assignment of blame. (*See id.*, citing Doc. 261-2 at 27.)  
4 Accordingly, the Court concludes that this is not a material disputed fact, and in the  
5 moment, Officer Fernandez believed Wheatcroft struck Officer Lindsey. Based on  
6 Officer Fernandez’s position on the drivers’ side of the car, then walking around the car  
7 to see Officer Lindsey unconscious on the ground with Officer Schneider trying to detain  
8 Wheatcroft, the Court concludes this was a reasonable mistake of fact.

9 To assess whether Officer Fernandez is entitled to qualified immunity, the Court  
10 must apply a two-step framework: whether the facts as shown by plaintiff state a  
11 violation of a constitutional right; and whether that right was clearly established at the  
12 time of the events in question. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). “The doctrine  
13 of qualified immunity protects government officials ‘from liability for civil damages  
14 insofar as their conduct does not violate clearly established statutory or constitutional  
15 rights of which a reasonable person would have known.’” *Pearson v. Callahan*, 555 U.S.  
16 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). “Qualified  
17 immunity balances two important interests—the need to hold public officials accountable  
18 when they exercise power irresponsibly and the need to shield officials from harassment,  
19 distraction, and liability when they perform their duties reasonably.” *Id.* “The protection  
20 of qualified immunity applies regardless of whether the government official’s error is ‘a  
21 mistake of law, a mistake of fact, or a mistake based on mixed questions of law and  
22 fact.’” *Id.* (quoting *Groh v. Ramirez*, 540 U.S. 551, 567 (2004) (Kennedy, J., dissenting)).

23 Here, viewing the facts in the light most favorable to Plaintiffs, the Court finds  
24 that Officer Fernandez is entitled to qualified immunity on both Plaintiffs’ excessive  
25 force and familial association claims.

26 The Court has already concluded that Officer Fernandez’s mistake of fact  
27 regarding who knocked out Wheatcroft was reasonable. Though it is clearly established  
28 that an individual has a right to be free from excessive force, and that “force is only

1 justified when there is a need for force,” *Blankenhorn v. City of Orange*, 485 F.3d 463,  
2 481 (9th Cir. 2007), a reasonably mistaken officer is justified in using “more force than in  
3 fact was needed” when he or she believes that a suspect is “likely to fight back,” *Saucier*,  
4 533 U.S. at 205. Plaintiffs argue that Officer Fernandez deployed his Taser against  
5 Wheatcroft while he was “defenseless” and he “posed no immediate threat.” (Doc. 307 at  
6 2.) Plaintiffs quote *Bryan v. MacPherson*, 630 F.3d 805, 809 (9th Cir. 2010) to argue that  
7 “there was no immediate threat.” (*Id.*) But in *Bryan*, the plaintiff was “obviously and  
8 noticeably unarmed, made no threatening statements or gestures, did not resist arrest or  
9 attempt to flee, but was standing inert twenty to twenty-five feet away from the officer.”  
10 630 F.3d at 809. Here, Officer Fernandez testified at his deposition that he “couldn’t see  
11 what [Wheatcroft] was holding in his hands” and Wheatcroft was within several feet of  
12 an unconscious officer while thrashing around. (Doc. 246-1 at 172). Officer Fernandez’s  
13 single use of a Taser in dart mode was reasonable under the circumstances.

14 Likewise, given Officer Fernandez’s mistake of fact and even viewing the facts in  
15 the light most favorable to Plaintiffs, no reasonable jury could conclude that Officer  
16 Fernandez had a purpose to harm Wheatcroft outside of legitimate law enforcement  
17 objectives. The Court has already determined that the purpose to harm standard applies  
18 to the five-minute melee between the Defendant Officers and Wheatcroft. (Doc. 294 at  
19 24.) Thus, Plaintiffs must prove that Officer Fernandez was driven by “illegitimate law  
20 enforcement objectives,” such as “bullying a suspect or getting even.” *A.D. v. California*  
21 *Highway Patrol*, 712 F.3d 446, 453 (9th Cir. 2013) (quoting *Wilkinson v. Torres*, 610  
22 F.3d 546, 554 (9th Cir. 2010) (internal alterations and quotations omitted)). Plaintiff’s  
23 evidence falls short of this standard. (Doc. 307 at 5, *see also* Doc. 246-1 at 172.)  
24 Considering Officer Fernandez’s reasonable mistake of fact, no reasonable jury could  
25 conclude that illegitimate law enforcement objectives were behind his decision to Tase  
26 Wheatcroft one time. Officer Fernandez believed Wheatcroft had struck Officer Lindsey  
27 and knocked him unconscious and was still unhandcuffed. Accordingly, his subsequent  
28 decision to Tase him was not done with “an illegitimate purpose in mind.” *Id.* (quoting

1 *Porter v. Osborn*, 546 F.3d 1131, 1140 (9th Cir. 2008)).

2 **IV.**

3 Defendants assert that “case law is legion that excessive force claims must be  
4 analyzed on an individualized basis.” (Doc. 299 at 7.) A motion for reconsideration may  
5 not repeat previously made arguments. LRCiv. 7.2(g). As such, a motion for  
6 reconsideration should not be used to ask the court to rethink what it has already thought  
7 through in its previous ruling. *Defs. of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D.  
8 Ariz. 1995). Accordingly, mere disagreement with the previous order is an insufficient  
9 basis for reconsideration. *Adams v. Symetra Life Ins. Co.*, No. CV-18-0378-TUC-JGZ  
10 (LAB), 2020 WL 4814249, at \*2 (D. Ariz. Aug. 19, 2020). Defendants’ motion is denied  
11 because it relitigates arguments from the summary judgment phase.

12 Officer Fernandez also argues that he is “entitled to common law qualified  
13 immunity from Plaintiff’s state law claims.” (Doc. 299 at 9.) But Plaintiff did not allege  
14 any state law claims against Officer Fernandez that survived the summary judgment  
15 stage. (*See* Docs. 35, 294.) Nevertheless, the Court, having granted summary judgment  
16 for Defendants on Plaintiffs’ remaining § 1983 claims, dismisses Officer Fernandez from  
17 this case. Defendants’ remaining arguments, as related to Officer Fernandez’s conduct  
18 forming the basis for Plaintiffs’ state law claims, is better suited for a motion in limine,  
19 and is denied without prejudice.

20 **V.**

21 Accordingly,

22 **IT IS ORDERED granting in part and denying in part** Defendants’ Motion for  
23 Clarification/Reconsideration. (Doc. 299.)

24 **IT IS ORDERED granting** Defendants’ Motion for Summary Judgment (Docs.  
25 245 and 274) as to Plaintiffs’ claims for excessive force (Count I) and civil rights  
26 violations (Count V) as to Defendant Michael Fernandez. As set forth herein,  
27 Defendants’ motion for reconsideration is denied in all other respects.

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